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Supreme Court of the United States.

October Term, 1909.

EL BANCO POPULAR DE ECONOMIAS Y PRESTAMOS DE SAN JUAN, P.R.,
APPELLANT,
v.
ELIAS R. WILCOX,
APPELLEE.

APPEAL FROM THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIRST CIRCUIT.

Appellant's Supplemental Brief on the Jurisdictional Question.

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Appellee.

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STATEMENT OF THE CASE.

This is an equity appeal from a final decree (r. p. 99) of the Circuit Court of Appeals for the First Circuit reversing the final decree (r. p. 34) of the District Court of the United States for the District of Porto Rico, which ordered the appellee (hereinafter referred to as the defendant) to pay to the appellant (hereinafter referred to as the plaintiff) $9631.92, the amount due on two mortgages of real estate in Porto Rico, the unpaid principal of which amounted to $6300, and directed in default of such payment a foreclosure of the

mortgages by sale, thus establishing a personal liability of the defendant for said indebtedness which could be enforced as to any deficiency by suit against him.

Coney v. *Winchell*, 116 U.S. 227, 230.

The jurisdiction of the District Court is based wholly upon the facts, alleged in the bill (r. p. 2) and admitted by the answer (r. p. 17), that the defendant is a citizen of the United States and that the matter in dispute exceeds the sum of $1000.

The jurisdictional question is not free from difficulty, and the appellant wishes to consider the statutes and decisions involved with greater care than has been exercised in the preparation of the brief heretofore filed.

ARGUMENT.

The appeal from the District Court to the Court of Appeals was allowed on the 24th day of February, 1917 (r. p. 71), and the allowance of the appeal from the Circuit Court of Appeals to the Supreme Court was on the 27th day of February, 1919 (r. p. 99). The jurisdiction of these Courts of this case under the statutes then in force was continued by the Act of March 2, 1917, c. 145, secs. 40, 45.

By the Act of April 12, 1900, c. 191, sec. 34 (31 Stat. 84), called the "Foraker Act," and by the Amendatory Act of March 2, 1901, c. 112, sec. 3 (31 Stat. 953), the District Court was given the ordinary jurisdiction of District and Circuit Courts of the United States, thus including controversies "between citizens of different states in which the matter in dispute exceeds" $2000; controversies "between citizens of a state and foreign state citizens or subjects" involving a like amount;

and of all controversies "where the parties or either of them are citizens of the United States or citizens or subjects of a foreign state or states wherein the matter in dispute exceeds . . . the sum or value of $1000."

Section 34 of the "Foraker Act" is as follows:

> *"Sec. 34. Porto Rico shall constitute a judicial district to be called 'the district of Porto Rico.' The President, by and with the advice and consent of the Senate, shall appoint a district judge, a district attorney, and a marshal for said district, each for a term of four years, unless sooner removed by the President. The district court for said district shall be called the district court of the United States for Porto Rico and shall have power to appoint all necessary officials and assistants, including a clerk, an interpreter, and such commissioners as may be necessary, who shall have like power and duties as are exercised and performed by commissioners of the circuit courts of the United States, and shall have, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognizant in the circuit courts of the United States, and shall proceed therein in the same manner as a circuit court. The laws of the United States relating to appeals, writs of error and certiorari, removal of causes, and other matters and proceedings as between the courts of the United States and the courts of the several states, shall govern in such matters and proceedings as between the district court of the United States and the courts of Porto Rico. Regular terms of said court shall be held at San Juan*

commencing on the second Monday in April and October of each year, and also at Ponce on the second term in January of each year, and special terms may be held at Mayaguez at such other stated times as said judge may deem expedient. All pleadings and proceedings in said court shall be conducted in the English language."

Section 3 of the Act of March 2, 1901, is as follows:

"Sec. 3. That the jurisdiction of the district court of the United States for Porto Rico in civil cases shall, in addition to that conferred by the Act of April twelfth, nineteen hundred, extend to and embrace controversies where the parties, or either of them, are citizens of the United States, or citizens or subjects of a foreign state or states wherein the matter in dispute exceeds exclusive of interests or costs the sum or value of one thousand dollars."

Section 241 of the Judicial Code (Act of March 3, 1911, c. 231, 36 Stat. 1087) confers jurisdiction on the Supreme Court to review on appeal all judgments of the Circuit Court of Appeals which are not made final by the provisions of that chapter. That section is as follows:

"Sec. 241. In any case in which the judgment or decree of the circuit court of appeals is not made final by the provisions of this Title, there shall be of right an appeal or writ of error to the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars, besides costs. (36 Stat. L. 1157)."

Section 128 of the Judicial Code, as amended by the Act of January 28, 1915 (38 Stat. 803), c. 22, sec. 2, enumerates the cases wherein the decrees of the Circuit Court of Appeals are made final, and is as follows:

> *"Sec. 128. The circuit court of appeals shall exercise appellate jurisdiction to review by appeal or writ of error final decisions in the district courts, including the United States district court of Hawaii and the United States district court for Porto Rico, in all cases other than those in which appeals and writs of error may be taken direct to the Supreme Court, as provided in section two hundred and thirty-eight, unless otherwise provided by law; and, except as provided in sections two hundred and thirty-nine and two hundred and forty, the judgments and decrees of the circuit court of appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different states; also in all cases arising under the patent laws, under the trademark laws, under the copyright laws, under the revenue laws, and under the criminal laws, and in admiralty cases."*

Sections 239 and 240 relate to certificates by the Circuit Court of Appeals and to certiorari.

The suit at bar is not included in this enumeration, for it is between a corporation created by the laws of Porto Rico and a citizen of that territory and a citizen of the United States resident in Porto Rico. The plaintiff is a citizen of Porto Rico—

Martinez v. *La Asociacion De Senoras*, 213 U.S. 20;
Barrow Steamship Co. v. *Kane*, 170 U.S. 100—

and neither a citizen of a foreign country—

De Lima v. *Bidwell*, 182 U.S. 1;
Porto Rico v. *Castillo*, 227 U.S. 270—

nor a citizen of a state—

Barney v. *Baltimore*, 6 Wall. 280.

Section 241 is so explicit in granting a right of appeal in all cases in which the decree of the Court of Appeals is not made final and section 128 is so definite in the enumeration of those cases in which such appeal is made final that this case, not within that enumeration, is brought within the principle enunciated in *Bate Refrigerating Co.* v. *Sulzberger*, 157 U.S. 1, at page 37:

> "'*It is not for the court to say, where the language of the statute is clear, that it shall be so construed as to embrace cases, because no good reason can be assigned why they were excluded from its provisions.*' *Scott* v. *Reid*, 10 Pet. 524, 527."

The question is purely one of construction, and the plain language of the statutes is not controlled by any of the considerations urged in the brief of the appellee.

The appellee contends at page 14 of his brief that the District Court for Porto Rico since its organization has been governed as to its jurisdiction by special legislation of Congress.

But, as we have seen, section 34 of the "Foraker Act" gave that Court the "*ordinary jurisdiction*" of District and Circuit Courts of the United States, and section third of the Act of March 2, 1901, merely extended that jurisdiction to include cases involving more than $1000 wherein either of the parties was a citizen of the United States or an alien.

The Act of March 2, 1917, c. 145, sec. 41 (39 Stat. 965), with reference to the District Court of the United States for Porto Rico, now provides that—

> "*Such district court shall have jurisdiction of all cases cognizable in the district courts of the United States, and shall proceed in the same manner. In addition said district court shall have jurisdiction for the naturalization of aliens and Porto Ricans, and for this purpose residence in Porto Rico shall be counted in the same manner as residence elsewhere in the United States. Said district court shall have jurisdiction of all controversies where all of the parties on either side of the controversy are citizens or subjects of a foreign State or States, or citizens of a State, Territory or District of the United States not domiciled in Porto Rico, wherein the matter in dispute exceeds, exclusive of interest or cost, the sum or value of $3,000, and of all controversies in which there is a separable controversy involving such jurisdictional amount and in which all of*

the parties on either side of such separable controversy are citizens or subjects of the character aforesaid: Provided, That nothing in this Act shall be deemed to impair the jurisdiction of the District Court of the United States for Porto Rico to hear and determine all controversies pending in said court at the date of the approval of this Act."

It thus appears that the special legislation referred to by the appellee has throughout given to the District Court for Porto Rico "jurisdiction of all cases cognizable in the District Courts of the United States" with a like procedure, and has extended that jurisdiction with like procedure in the first instance to certain cases where all of the parties on either side of the controversy are citizens of the United States or aliens with the later domicillary and value limitations.

The appellee contends at page 15 of his brief that the statutes concerning the appellate review of the decisions of the District Court for Porto Rico were of a special nature differing from those governing the review of decisions of any other District Court.

On the contrary, by the Judicial Code and its amendments, not only was the case at bar put within the jurisdiction of the District Court for Porto Rico, but the decisions of that Court have been made subject to the *same* review by the Circuit Court of Appeals and the decisions of the Circuit Court of Appeals have been made subject to the same review by the Supreme Court as in cases arising in the District Courts of the United States. Section 35 of the "Foraker Act" provided—

"That writs of error and appeals from the final decisions of the Supreme Court of Porto Rico and the District Court of the United States shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the Supreme Courts of the Territories of the United States; and such writs of error and appeal shall be allowed in all cases where the Constitution of the United States, or a treaty thereof, or an Act of Congress is brought in question and the right claimed thereunder is denied."

The appellate jurisdiction thus conferred by reference to the Supreme Courts was in all cases involving an amount exceeding $5000 as well as in cases involving federal laws and treaties, Act of March 3, 1885 (23 Stat. 443). This statute is as follows:

"Be it enacted, &c. That no appeal or writ of error shall hereafter be allowed from any judgment or decree in any suit at law or in equity in the supreme court of the District of Columbia, or in the supreme court of any of the Territories of the United States, unless the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars.

. . . . . .

"Sec. 2. That the preceding section shall not apply to any case wherein is involved the validity of any patent or copy-right or in which is drawn in question the validity of a treaty or statute of or an authority exercised under the United

States; but in all such cases an appeal or writ of error may be brought without regard to the sum or value in dispute."

These provisions were re-enacted by section 244 of the Judicial Code, which is as follows:

"Writs of error and appeals from the final judgments and decrees of the Supreme Court of and the United States District Court for Porto Rico, may be taken and prosecuted to the Supreme Court of the United States, in any case wherein is involved the validity of any copyright, or in which is drawn in question the validity of a treaty or statute of, or authority exercised under, the United States or wherein the Constitution of the United States or a treaty thereof, or an Act of Congress is brought in question and the right claimed thereunder is denied without regard to the sum or value in dispute; and in all other cases in which the sum or value of the matter in dispute, exclusive of costs, to be ascertained by the oath of either party or of other competent witnesses, exceeds the sum or value of five thousand dollars. Such writs of error and appeals shall be taken within the same time, in the same manner, and under the same regulations as writs of error and appeals are taken to the Supreme Court of the United States from the District Courts."

This section was repealed, and the appellate supervision of the Court again changed by the Act of January 28, 1915 (38 Stat. 803). This Act amended sec-

tions 128 and 238 of the Judicial Code to read as follows:

"Sec. 128. The Circuit Courts of Appeals shall exercise appellate jurisdiction to review by appeal or writ of error final decisions in the District Courts, including the United States District Court for Hawaii and the United States District Court for Porto Rico, in all cases other than those in which appeals and writs of error may be taken direct to the Supreme Court, as provided in section two hundred and thirty-eight, unless otherwise provided by law; and except as provided in sections two hundred and thirty-nine (relating to certified questions) and two hundred and forty (relating to certiorari) the judgments and decrees of the Circuit Courts of Appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different states; also in all cases arising under the patent laws, under the trademark laws, under the copyright laws, under the revenue laws, and under the criminal laws, and in admiralty cases."

"Sec. 238. Appeals and writs of error may be taken from the District Courts, including the United States District Court for Hawaii and the United States District Court for Porto Rico, direct to the Supreme Court in the following cases: In any case in which the jurisdiction of the Court is in issue, in which case the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision; from the final

sentences and decrees in prize causes; in any case that involves the construction or application of the Constitution of the United States; in any case in which the constitutionality of any law of the United States or the validity or construction of any treaty made under its authority is drawn in question; and in any case in which the constitution or law of a state is claimed to be in contravention of the Constitution of the United States."

And the jurisdiction of the Supreme Court to review the judgment of the Circuit Court of Appeals in cases originating in the United States District Court for Porto Rico was of course defined by section 241 of the Judicial Code, which for convenience in this connection we again recite:

"Sec. 241. In any case in which the judgment or decree of the circuit court of appeals is not made final by the provisions of this Title, there shall be of right an appeal or writ of error to the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars, besides costs. (36 Stat. L. 1157)."

The contention at page 28 of the appellee's brief that the Act of March 2, 1917, indicates the intention of Congress to give an appeal either directly to the Supreme Court of the United States from the District Court or to the Circuit Court of Appeals, and to give no other appeal.

This contention is based upon the assumption that no appeal lies in the case at bar from the District Court to the Circuit Court of Appeals, and to support

that assumption the appellee appeals to sections 42 and 43 of the Act referred to.

Section 42 contains the provision that—

> *"The said district court shall be attached to and included in the first circuit of the United States, with the right of appeal and review by said Circuit Court of Appeals in all cases where the same would lie from any District Court to a Circuit Court of Appeals of the United States, and with the right of appeals and review directly by the Supreme Court of the United States in all cases where a direct appeal would lie from such district courts."*

Section 43 provides—

> *"That writs of error and appeals from the final judgments and decrees of the Supreme Court of Porto Rico may be taken and prosecuted to the Circuit Court of Appeals for the First Circuit and to the Supreme Court of the United States as now provided by law"* (39 Stat. 966).

The repealing clause of the Act of March 2, 1917, is section 58, which reads as follows:

> *"That all laws or parts of laws applicable to Porto Rico not in conflict with any of the provisions of this Act, including the laws relating to tariffs, customs and duties on importations into Porto Rico prescribed by the Act of Congress entitled 'An Act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes' approved April 12, 1900, are*

that the judgment of the Circuit Court of Appeals was not reviewable.

In *American Security Company* v. *District of Columbia*, 224 U.S. 491, the jurisdiction of the Supreme Court to review a final judgment of the Circuit Court of Appeals of the District of Columbia depended upon the construction of the sixth clause of section 250 of the Code, giving such jurisdiction "in cases in which the construction of any law of the United States is drawn in question by the defendant," and it was decided that a purely local law relating to the District of Columbia was not within the meaning of that section.

In *Inter-Island Steam Navigation Company* v. *Ward*, 242 U.S. 1, the jurisdiction conferred on this Court by section ~~241~~ of the Judicial Code as originally enacted to review the final judgments of the territorial Supreme Court in all cases involving more than $5000 had been transferred by the Act of January 28, 1915, amending section 246 of the Code (38 Stat. 804), to the Circuit Court of Appeals, and it was attempted to support the appellate jurisdiction of this Court under section 241 of the Code on the ground that the case was one of those in which the decree of the Court of Appeals was not made final by section 128 of the Code. This Court held that section ~~250~~ was inapplicable, putting its decision upon the ground that "the Supreme Courts of Hawaii and of Porto Rico were not left to be controlled by the law generally applicable to courts of the United States," and that "as the remedy intended to be afforded by the amendment of 1915 was evidently the restricting of the jurisdiction

of this court to the end that the burden on its docket might be lightened, we cannot construe that amendment as frustrating the purpose which it was adopted to accomplish."

But, as has been pointed out, the District Court of Porto Rico, appeals therefrom, and the procedure therein, have throughout been controlled by the law generally applicable to District Courts of the United States, and at no time has this Court had jurisdiction on direct appeal of cases as such wherein one of the parties was a citizen of the United States and the jurisdictional amount was anything in excess of $1000.

It may be of some service in this connection to point out the legislation affecting the jurisdiction of the territorial Supreme Court and appeals therefrom, which differentiated them from District Courts and appeals from such Courts.

The Act of April 30, 1900, c. 339 (31 Stat. 141), established by section 81 the Supreme Court of Hawaii, and created by section 86 the District Court for Hawaii as a "federal court" with the ordinary jurisdiction of District and Circuit Courts of the United States.

By the provision in section 86 that "the laws of United States relating to appeals, writs of error, removal of causes and other matters and proceedings as between the courts of the United States and the courts of the several states, shall govern in such matters and proceedings as between the courts of the United States and the courts of the Territory of Hawaii," jurisdiction was given to the Supreme Court of the United States to review the judgments and decrees of the territorial Supreme Court in the cases enumerated in Re-

vised Statutes, sec. 709 (re-enacted as section 237 of the Judicial Code), *i.e.*, those involving constitutional and treaty questions regardless of the amount.

Equitable Life Assurance Society v. *Brown*, 187 U.S. 308.

The Act of 1900 does not give to the Circuit Court of Appeals jurisdiction to review the judgment of the territorial Supreme Court either in terms or by reference to section 15 of the Act of March 3, 1891, establishing the Circuit Court of Appeals, and any implication to the contrary is negatived by section 86 of the Act of 1900 giving to the Circuit Court of Appeals in the ninth circuit the appellate jurisdiction of the District Court generally exercised by the Circuit Courts of Appeals.

Ex Parte Wilders Steamship Co., 183 U.S. 545.

Section 6 of the Circuit Court of Appeals Act, therefore, did not apply to appeals from the territorial Supreme Court. In section 6, after enumeration of the cases in which the decrees of the Circuit Court of Appeals Act shall be final, occurs the provision that "in all cases not hereinbefore in this section made final there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States where the matter in controversy shall exceed $1000 besides costs."

Section 241 is a re-enactment of this provision, and is merely declaratory of the then existing law.

The Acts of March 3, 1905, c. 1465, sec. 3 (33 Stat. 1035), and March 3, 1909, c. 269 (35 Stat. 838),

amended section 86 of the Act of April 30, 1900, by a proviso "that writs of error and appeals may also be taken from the Supreme Court of the Territory of Hawaii to the Supreme Court of the United States in all cases where the amount involved exclusive of costs exceeds the sum or value of $5000."

The Judicial Code as originally enacted continued to differentiate between the District Courts of the United States, including that of Hawaii, and the Supreme Court of Hawaii, dealing with the former by provisions generally applicable to them all and dealing with the territorial Supreme Court by special sections of the Code.

Section 246 of the Code dealt only with appeals from the territorial Supreme Court to this Court, and was a re-enactment of the statutes which have been referred to in that connection.

Section 128 of the Code as originally enacted was a re-enactment of the statutes giving the Circuit Courts of Appeals appellate jurisdiction of the District Courts, including the United States District Court for Hawaii, and a re-enactment of the enumeration of the cases in which the decrees of the Circuit Courts of Appeals should be final.

Section 238 was a re-enactment of preceding legislation providing for appeals and writs of error from the District Courts of the United States, including that for Hawaii, direct to the Supreme Court, with the exception that appellate jurisdiction in cases of a conviction of a capital crime was transferred from the Supreme Court to the Circuit Courts of Appeals.

As has been pointed out, section 241 was a re-enactment of the provision in section 6 of the Circuit Court

of Appeals Act giving a right of appeal to the Supreme Court of the United States in all cases where the matter in controversy exceeds $1000 in which the judgment or decree of the Circuit Court of Appeals is not made final by section 128 of the Code, which is also a re-enactment of the provisions of section 6 of the Circuit Court of Appeals Act, enumerating the cases in which the review of District Court decisions by the Court of Appeals is made final.

By the Act of January 28, 1915, section 244 was repealed and section 246 was amended so that writs of error and appeals from the Supreme Court of Hawaii could be taken direct to the Supreme Court of the United States as in state cases, and a jurisdiction of the Supreme Court in cases involving $5000 or more was transferred *en bloc* to the Circuit Court of Appeals.

It is apparent from this review of the legislation that the provisions of sections 128 and 241, giving a right of appeal to this Court from all decrees of the Circuit Court of Appeals which are not made final by the enumeration contained in section 128, have no reference to appeals from the Supreme Court of Hawaii, and constitute an explicit declaration by Congress of a right of appeal to the Supreme Court in the case at bar.

Any suggestion that there is no reason other than the letter of the statutes for giving an appeal to the Supreme Court in the case at bar and making the decree of the Circuit Court of Appeals final in cases of diversity of citizenship and cases arising under the laws enumerated in section 128 is met by the fact that the distribution of appellate jurisdiction is governed

by the letter of the statute, and not by the importance of the cases dealt with. Thus an appeal lies in all cases to enforce the statutory liability of shareholders in national banks (*Kerbly* v. *Springfield Inst. for Savings*, 245 U.S. 330), although there are many cases arising under the revenue and patent laws of the United States of equal or greater importance wherein the decrees of the Circuit Court of Appeals are final.

The adherence of this Court to the letter of the statutes involved is strikingly marked by the opinion in *United States* v. *American Bell Telephone Company*, 159 U.S. 548, wherein it was held that a suit brought by the United States to cancel a patent was not a case "arising under the patent laws of the United States," and that a decree of the Circuit Court of Appeals therein was not final.

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